

Department of the Navy, DoD

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the applicant's spouse, next of kin, executor, guardian and other person recognized as a personal representative by the law of the applicant's domicile. One is considered incapable of executing an application for purposes of this paragraph only when the applicant is unable to sign the application under oath due to physical or mental incapacity. When an application is signed by a person other than the applicant, the circumstances rendering the applicant incapable of making sworn application shall be set forth in the application, with appropriate documentation.

(e) *Privacy Act Statement.* Disclosure of personal information requested by paragraph (c) of this section is voluntary; however, failure to accurately provide all requested information may result in the application being denied because of inadequate documentation of good cause.

[47 FR 49645, Nov. 2, 1982, as amended at 50 FR 23804, June 6, 1985]

PART 720—DELIVERY OF PERSONNEL; SERVICE OF PROCESS AND SUBPOENAS; PRODUCTION OF OFFICIAL RECORDS

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 32 CFR 700.206 and 700.1202.

Subpart A—Delivery of Personnel

SOURCE: 57 FR 5228, Feb. 13, 1992, unless otherwise noted.

§ 720.1 Delivery of persons requested by State authorities in criminal cases.

Subpart A of this part deals with requests by State authorities for the surrender of members or civilians pursuant to arrest warrants or similar process, generally in connection with a criminal prosecution. Responding to such requests by a State for delivery of members or civilian employees involves balancing the Federal interest in preserving sovereign immunity and the productivity, peace, good order, and discipline of the installation against the right of the State to exercise its jurisdiction. Additionally, by

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regulation, naval and Marine authorities are limited in the extent to which they can directly assist such an act. Commands should respond to such requests as set out below, generally using the minimum authority necessary to preserve the Federal interests without unduly restricting State jurisdiction.

§ 720.2 Delivery when persons are within the territorial limits of the requesting State.

When the delivery of any member or civilian is requested by local civil authorities of a State for an offense punishable under the laws of that jurisdiction, and such person is located at a Navy or Marine Corps installation within the requesting jurisdiction, or aboard a ship within the territorial waters of such jurisdiction, commanding officers are authorized to and normally will deliver such person when a proper warrant is issued. In the case of a member, delivery will only be effected upon compliance with § 720.6, subject to the exceptions in § 720.9. A judge advocate of the Navy or Marine Corps should be consulted before delivery is effected. The rule discussed above applies equally to civilian employees and civilian contractors and their employees when located on a Navy or Marine Corps installation, except that compliance with § 720.6 and consideration of § 720.9 are not required (for purposes of this part, "State" includes the District of Columbia, territories, commonwealths, and all possessions or protectorates of the United States). Commands should normally not become actively involved in civilian law enforcement. When a command has determined that a person is to be delivered in response to a valid warrant, the following guidance should be considered. If the person to be delivered is a military member, the member may be ordered to report to a location designated by the commanding officer and surrendered to civil authorities under Article 14, UCMJ (10 U.S.C. 814). If the person to be delivered is a civilian, the person may be invited to report to the designated space for delivery. If the civilian refuses, the civilian authorities may be escorted to a place where the civilian is located in order that delivery may be effected. A civilian may be

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directed to leave a classified area. All should be done with minimum interference to good order and discipline.

§ 720.3 Delivery when persons are beyond territorial limits of the requesting State.

(a) *General.* When State civil authorities request delivery of any member of the Navy or Marine Corps for an alleged crime or offense punishable under the law of the jurisdiction making the request, and such member is not attached to a Navy or Marine Corps activity within the requesting State or a ship within the territorial waters thereof, the following action will be taken. Any officer exercising general court-martial jurisdiction, or officer designated by him, or any commanding officer, after consultation with a judge advocate of the Navy or Marine Corps, is authorized (upon compliance with the provisions of this section and § 720.6, and subject to the exceptions in § 720.9) to deliver such member to make the member amenable to prosecution. The member may be delivered upon formal or informal waiver of extradition in accordance with § 720.3(b), or upon presentation of a fugitive warrant, in which case the procedures of § 720.3(c) apply. The rule discussed above applies equally to civilian employees and civilian contractors and their employees when located on a Department of the Navy installation not within the requesting State, except that compliance with § 720.6 and consideration of § 720.9 are not required.

(b) *Waiver of extradition.* (1) Any member may waive formal extradition. A waiver must be in writing and be witnessed. It must include a statement that the member signing it has received counsel of either a military or civilian attorney prior to executing the waiver, and it must further set forth the name and address of the attorney consulted.

(2) In every case where there is any doubt as to the voluntary nature of a waiver, such doubt shall be resolved against its use and all persons concerned will be advised to comply with the procedures set forth in § 720.3(c).

(3) Executed copies of all waivers will be mailed to the Judge Advocate General immediately after their execution.